



## COVID-19 Update: HHS issues EMTALA waiver for actions necessitated by COVID-19

March 17, 2020

**3/31/2020 Update:** On March 30, 2020, [additional blanket waivers](#) were issued by CMS, including waiver of enforcement of the EMTALA screening requirement (42 USC 1395dd(a)) to prevent the spread of COVID-19, so long as it is not inconsistent with a state's emergency preparedness or pandemic plan. This waiver applies nationwide without further application by hospitals to CMS.

On March 13, 2020, following President Trump's declaration of a national emergency due to the COVID-19 (coronavirus) pandemic, [the Secretary of Health and Human Services \(HHS\) issued](#), among others, the following Emergency Medical Treatment and Labor Act (EMTALA) waiver under his 1135 waiver authority:

Waiver of sanctions under EMTALA for the direction or relocation of an individual to another location to receive medical screening pursuant to an appropriate state emergency preparedness plan or for the transfer of an individual who has not been stabilized if the transfer is necessitated by the circumstances of the declared Federal public health emergency for the COVID-19 pandemic.

The waiver gives hospitals flexibility regarding the management of emergency department resources regarding COVID-19 screening and treatment. With this waiver, a hospital is permitted to redirect patients seeking COVID-19 screening to an alternative site, even off-campus, to conduct a medical screening examination (MSE) there, without conducting an MSE at the

hospital.

Note, however, that the waiver allows for redirection or transfer to deal *only* with the COVID-19 pandemic. Hospitals should not otherwise take actions inconsistent with EMTALA.

Also, the waiver expressly states that it does not apply to any action taken that discriminates among individuals on the basis of their source of payment or their ability to pay.

The EMTALA waiver is effective retroactively to March 1, 2020, and is not limited to a 72-hour duration as some 1135 waivers are. This EMTALA waiver will terminate either upon termination of the declared national emergency or public health emergency, or 60 days from the date of the waiver, which may be extended by the secretary of HHS.

Additional information on EMTALA and prior EMTALA guidance related to COVID-19 is available in our [prior publication](#).

# Authors

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